In the United States Court of Claims.

SAMUEL M. PUCKETT *vs.* THE UNITED STATES.

1. Where the United States Marshal sold certain fractional sections of land as the property of one H., and the purchase money passed into the public treasury, and it was subsequently ascertained that the land so sold was not the property of H., but belonged in fact to other persons, and that H. never had any title to them which could pass by virtue of the sale, although the sale was made without any notice of any defect of title, and under the marshal's assurance that he would make a title, the sale being a judicial sale, the vendee cannot recover the amount of the purchase money from the plaintiff in the execution, the United States.
2. The marshal is the mere minister of the law, and a due discharge of his duties does not require him to warrant the title of the property sold, nor can he expressly or impliedly bind the plaintiff in the execution, by any assurance or warranty that he may make at the sale.
3. Upon a judicial sale there is no implied warranty of title.

The opinion of the court was delivered by

GILCHRIST, C. J.—This claim is, substantially, an action against the United States for money had and received. It appears from the petition that the United States marshal for the district of Mississippi sold certain fractional sections of land situated in Neshoba county, in Mississippi, as the property of one Wiley P. Harris, to one John E. Richardson, for the sum of $10,689 41. The claimant, and one Gooch, became sureties for Richardson for the payment of the purchase-money, and, subsequently, the claimant became a partner with Richardson in the purchase, and signed promissory notes for the same, payable to the United States. Suits were instituted upon the notes, and judgment obtained thereon, against the makers for the amount due, including interest and costs. The claimant paid the sum of $5,000, which passed into the treasury of the United States, and, subsequent to the payment of the money, he ascertained that the lands sold as the property of Harris in fact belonged to other persons, and that Harris never had any title to them, and, consequently, no title could pass by virtue of the sale by the United States. The sale was made without any notice of any defect in the title, and under the assurance by the

marshal that he would make a title at a future time; which, however, has not been done.

The claimant alleges that the consideration of the notes has totally failed, and that he is entitled to recover of the United States the sum of $5,000, with interest.

The assurance by the marshal that he would make a title to the land at a future day cannot be the foundation of any right in the claimant. Whatever evidence his declarations may furnish of his personal liability in a suit against himself, they cannot bind the United States. If he steps out of his official duty, and does what the law has given him no authority to do, he may make himself personally responsible, and the injured party must look to him for redress. He is the mere minister of the law to execute the order of the court, and a due discharge of his duty does not require more than that he should give to purchasers a fair opportunity of examining and informing themselves of the nature and condition of the property offered for sale. *The Monte Allegre*, 9 Wheaton, 645. Nor upon a judicial sale, which we presume this to have been, is there any implied warranty of title. Neither the marshal nor the auctioneer, while acting in the scope of their authority, can be considered as warranting the property sold, nor can the marshal do any act that shall expressly or impliedly bind any one by warranty. Ibid. 645. It is on the same principle that it is held in South Carolina that there is no implied warranty in a sale of land made by the ordinary for partition, and the purchaser who has been evicted by title paramount cannot recover the purchase money back from the ordinary, though it still remains in his hands undistributed. *Evans* vs. *Dendy*, 2 Speers, 9.

So it has often been held that there is no implied warranty in a sheriff's sale. *Yates* vs. *Bond*, 2 McCord, 382; *Davis* vs. *Murray*, 2 Rep. Con. Ct. 143; *Bashore* vs. *Whistler*, 3 Watts, 490. In South Carolina, where one purchased land at a sheriff's sale, to which the defendant in the execution had no title, the sheriff may compel him by action to pay the purchase-money without having first tendered the sheriff's titles. *Moore* vs. *Akin*, 2 Hill, S. C. 403.

As there is no implication of a warranty, the question arises

whether, upon the principle which regulates the action of assumpsit for money had and received, the claimant can recover of the United States the consideration he has paid.

It is provided by the first section of the act of May 7, 1800, (2 St. at Large, 61,) that when the United States shall have received seisin and possession of lands delivered in satisfaction of a judgment, it shall be lawful for the marshal of the district "to expose the same to sale at public auction, and to execute a grant thereof to the highest bidder on receiving payment of the full purchase-money; which grant so made shall vest in such purchaser all the right, estate, and interest of the United States in and to such lands or other real estate." Although there is no express statement to that effect, we can make no other inference from the petition than that the lands mentioned were sold by the marshal by virtue of the authority vested in him by this act. If such be the case, he can do no more than to convey to the purchaser such right and interest as the United States possessed, and therefore the case is like that where a person releases to another all his right and interest in a tract of land, and receives the consideration therefor. If, in such a case, the grantee can recover of the grantor the consideration he has paid for the release, on the ground that the consideration has failed, then this claimant has a right to recover of the United States.

It has been repeatedly held that where money is paid for land conveyed by deed of release and quit-claim, it cannot be recovered back, though the title be wholly defective, unless there be fraud on the part of the vendor. *Gates* vs. *Winslow*, 1 Mass. 65; *Wallis* vs. *Wallis*, 4 Mass. 135; *Emerson* vs. *Washington County*, 9 Greenl. 94. In the case of *Soper* vs. *Stevens*, 2 Shep., 133, it was held that where a note, given in consideration of a quit-claim deed of land, and where there is no fraud, has been paid by the grantee, the money cannot be recovered back on the eviction of the grantee by an older and better title. In all such cases as have been cited, the money is considered as having been paid in consideration of the conveyance of the interest the grantor has in the premises, such as it may be, and not in consideration that the grantor will convey a

good title to the land. The grantee buys only what the grantor has to sell, and where without fraud, he sells only his interest, the consideration cannot be said to have failed, so as to give a right of action to the grantee. The United States are entitled to the benefit of this principle, and, so far as the facts appear in the petition, there is no more reason for permitting the claimant to recover than there would be for rendering a judgment for the plaintiff upon a similar state of facts in an ordinary suit at law. Our opinion is, that upon the case stated, the claimant is not entitled to recover, and that there is no principle of law that would authorize us to order testimony to be taken.

In the Supreme Court of Rhode Island, September Term, 1855.

THOMAS CROCKER *vs.* ELBRIDGE G. AREY.

1. That a debt is barred by the statute of limitations of the State in which it was contracted, and of which both plaintiff and defendant continue citizens and residents, cannot be pleaded in bar to a suit for that debt in the courts of this State.
2. The first coming into the State of a person is to be construed as a "return into the State" within the meaning of sec. 2 of "an act for the limitation of certain personal actions," (Dig. 1844, p. 221.)

This action was assumpsit upon a promissory note for $100 on demand, with interest, payable to plaintiff or order, signed by defendant and dated Barnstable, Mass., February 21, 1848. It was admitted that both plaintiff and defendant had personally resided in Barnstable since the making of the note, and that the defendant had never been within the State of Rhode Island until the day of the service upon him of the plaintiff's writ, July 23, 1855. In bar of the action the defendant pleaded, first, the statute of limitations of the State of Massachusetts, to which the plaintiff demurred; and, secondly, the statute of limitations of Rhode Island, to which the plaintiff replied as set forth in the opinion of the court. To the rejoinder of the defendant, also set forth in the opinion, the plaintiff demurred. The defendant joined in the two demurrers, and the questions raised by each were submitted to the court.